

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of Southern California Gas Company (U904G) for Authority to increase its Gas Revenue Requirements to Reflect its Accomplishments for Demand-Side Management Program Years 1995 and 1997, Energy Efficiency Program Year 1999, and Low-Income Program Years 1998 and 1999 in the 2000 Annual Earnings Assessment Proceeding ("AEAP").

Application 00-05-002

And Related Matters.

Application 00-05-003
Application 00-05-004
Application 00-05-005
Application 01-05-003
Application 01-05-009
Application 01-05-017
Application 01-05-018
Application 02-05-002
Application 02-05-003
Application 02-05-005
Application 02-05-007

ADMINISTRATIVE LAW JUDGE'S RULING

The purpose of this ruling is to set forth the schedule and scope for this proceeding, as discussed at the February 27, 2003 prehearing conference (PHC) and clarified by subsequent e-mail communications.

This consolidated proceeding will address the earnings claims for the 2000, 2001, and 2002 Annual Earnings Assessment Proceedings (AEAPs), as well as the

load management cost recovery issues filed in the 2002 AEAP per the Commission's direction. As discussed below, consolidation of the 2003 AEAP into this proceeding is currently under consideration.

Attachment 1 sets forth the schedule for the 2000, 2001, and 2002 AEAPs established by today's ruling.

1. Pre-1998 Energy Efficiency Earnings Claims

Each of the AEAP applications consolidated by this proceeding includes earnings claims related to the shared-savings earnings mechanism adopted for pre-1998 energy efficiency programs. By ruling dated March 13, 2002, Administrative Law Judge (ALJ) Walwyn, in consultation with the Assigned Commissioner's Office, solicited comments on whether the Commission should reopen Rulemaking (R.) 91-08-003/Investigation (I.) 91-08-002 to modify the shareholder incentives adopted in that proceeding. The ruling describes the issue as follows:

"In D.94-10-059, the Commission stated that it wanted to adopt a level of earnings opportunity that was sufficient (and not too much) to off-set the regulatory and financial biases against demand-side management (or in favor of supply-side resources) that the utilities might have in procuring least-cost resources. (57 CPUC 2d at 51.) The mechanism authorized payments over a 7 to 10 year period based on a complex process of measuring long-term energy savings. Over the objections of ORA and The Utility Reform Network (TURN), the Commission set a target shareholder earnings level of 30% of long-term energy savings, without a cap, stating this was a reasonable level in light of the utilities assuming a downside risk of penalties.

"Almost seven years later, our experience under this mechanism shows that (1) no penalties have ever been assessed; (2) the adopted measurement protocols award incentives for events unrelated to any utility actions, such as technical degradation levels of customers' equipment; and (3) SDG&E projects its shareholders will earn a profit of 92.5% on its 1996 programs and 80.8% on its 1995 programs, and

PG&E will earn 70.7% on its 1995 programs if the incentive mechanism remains unchanged.

“Based on this information, I find good cause exists to request parties to comment on whether the Commission should, based on these comments, reopen D.94-10-059 for shareholder incentives before us in this and future AEAPs.”¹

Comments were filed on March 29, 2002 by the California Energy Commission (CEC), Office of Ratepayer Advocates (ORA), Natural Resources Defense Council, Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SCE), The Utility Reform Network (TURN), Women’s Energy Matters (WEM) and jointly by Southern California Gas Company (SoCal) and San Diego Gas & Electric Company (SDG&E). Reply comments were filed on April 12, 2002 by all of the parties listed above, except for WEM.

Clearly, the threshold issue for all earnings claims related to the pre-1998 shared-savings mechanism described in the ruling is whether the Commission should revisit the decision that established that mechanism.² I have requested information to update and augment the table presented in Attachment A of the March 13, 2002 ruling that I believe is needed in order to consider the issue. Per my direction at the PHC, the supplemental information is due March 17, 2003 and comments on that filing are due March 24, 2003.³ The utilities and interested

¹ March 13, 2002 Administrative Law Judge’s Ruling, pp. 1-3.

² As I discussed at the PHC, the language of the March 13 ruling is clear that the reopening issue relates to the shared-savings incentive mechanism adopted in D.94-10-059, and not to low-income energy efficiency program incentives or post-1997 milestone-based incentives for energy efficiency.

³ See Reporter’s Transcript (RT), PHC-4, February 27, 2003 at 235-257 and Attachment 5.

parties will have the opportunity to file reply comments by April 1, 2003. (See Attachment 1.)

Should the Commission proceed with the pre-1998 incentive claims without reopening Decision (D.) 94-10-059, I believe that the current record needs to be augmented with an evaluation and verification of the underlying retention and persistence studies. The Commission has recently issued a Request For Proposals (RFP) that would, among other measurement and verification tasks, hire an independent contractor for this purpose.⁴

At the PHC, we also discussed a preliminary list of studies related to pre-1998 earnings claims, which indicated the type of review (review memo or verification report) that ORA has conducted to date for the 1999 and 2000 AEAPs. I directed the utilities to update the listing with the studies that will be completed (and the Commission would need to review) through the 2003 AEAP, and with the reviews ORA has conducted to date for the 2001 AEAP. This information was filed on March 17, 2003. As I directed at the PHC, ORA should indicate what plans it has to conduct a review memo or verification study for the 2001 AEAP pre-1998 earnings claims if none have been completed to date.⁵ ORA should also indicate the type of review it plans to conduct for the load impact/retention studies underlying the 2002 AEAP pre-1998 energy efficiency earnings claims. ORA should file and serve this information within 10 days from the date of this ruling.

⁴ See: March 12, 2003 Request For Proposal, Notice to Prospective Proposers For Measurement and Verification of 2003 Utility Statewide Energy Efficiency Programs, which is posted on the Commission's website at www.cpuc.ca.gov.

⁵ RT at 189-191, 194.

At this point in time, until the Commission addresses the threshold issue of reopening D.94-10-059 and I obtain the additional information outlined above, it is premature to establish a fixed schedule for this phase of the proceeding.

2. Low-Income Energy Efficiency (LIEE) Claims

As I observed at the PHC, the LIEE earnings claims contained in the utilities' 2000 and 2001 AEAP applications appear to be the closest to decision-making readiness. I solicited additional comments from ORA and other interested parties on the verification of those earnings claims, due March 28, 2003. Reply comments are due April 4, 2003.⁶ The scope of the additional comments is limited to any additional technical or factual issues related to the specific claims submitted by the utilities under the LIEE shareholder mechanisms in place.⁷ I will determine whether evidentiary hearings are needed for the 2002 AEAP claims by mid-April. If they are, we will have hearings during the week of May 5, 2003. (See Attachment 1.) If no hearings are required on disputed issues, I will proceed to draft an ex parte decision on these earnings claims.

As part of the 2002 AEAP, the utilities have submitted an LIEE load impact study. I expect ORA and other interested parties to evaluate this study and submit testimony on whether it meets the study objectives and whether the methodology and results are reasonable.⁸ The schedule for the 2002 AEAP is also set forth in Attachment 1. If hearings are needed, they will be held during the week of July 15, 2003.

⁶ See discussion, RT at 139-142; 225-226, and my March 14, 2003 electronic ruling granting an extension to the dates established at the PHC, per WEM's request.

⁷ See RT at 225-226.

⁸ See RT at 142-147.

3. Load Management Cost Recovery

By D.01-07-029, the Commission adopted modifications to the interruptible tariffs and rotating outage programs of PG&E, SCE and SDG&E, and directed these utilities to establish a Interruptible Load Program Memorandum Account (ILPMA) to track the costs and revenues associated with the programs, as follows:

“The memorandum account shall track all dollars spent above funds authorized in current rates to implement any program, activity, study or report ordered herein. The accounting shall separately identify the cost and revenue associated with each program, activity, study or report (e.g., separately track costs and revenues for the new Bas Interruptible Program, Voluntary Demand Response Program, each curtailment study, each report). Each respondent utility may include interest on the balance. The burden to demonstrate reasonableness for future cost recovery shall be on each respondent utility Upon a finding of reasonableness, balances in each memorandum account shall be recovered from ratepayers without respect to any policies otherwise in place regarding the end of the rate freeze. Memorandum account balances shall be reviewed in each utility’s Annual Earnings Assessment Proceedings.”⁹

Accordingly, the utilities filed requests for cost recovery of ILPMA balances in their 2002 AEAP applications. As I discussed at the PHC and by subsequent e-mail correspondence, additional comments are due March 28, 2003 and reply comments are due April 11, 2003. I have established a schedule for this phase of the proceeding along the same timeline as the 2000 and 2001 AEAP earnings claims for LIEE. (See Attachment 1.)

⁹ D.01-07-029, as modified by D.01-04-006 and D.01-04-009, Ordering Paragraph 15.

4. Post-1997 Energy Efficiency Earnings Claims (Milestone Mechanisms)

As pointed out by Judge Walwyn during previous PHCs, the record in this proceeding is not yet complete enough to enable the Commission to review milestone accomplishments associated with post-1997 energy efficiency earnings claims. I reiterated her request to obtain a better idea of what milestone achievements have been reviewed to date, by which party (e.g., ORA, CEC), what additional milestone verification efforts will be conducted, and how the intervenors plan to coordinate their efforts so that the Commission can have a complete record with which to evaluate the post-1997 earnings claims.¹⁰ On March 14, 2003, I received a brief statement that lays out in general terms the types of additional verification efforts that the CEC may be undertaking.

However, the response is not completely responsive to my (or Judge Walwyn's) request. I need to know--by milestone and program year claim—which milestone-related earnings claims for the 2000 and 2001 AEAPs have been independently reviewed in testimony to date, which have not, and how the “gaps” in review are going to be filled by which intervenors (ORA, CEC or TURN). Similarly, I need to have this information for the 2002 AEAP earnings claims for post-1997 programs. This information should be submitted jointly by ORA, CEC and TURN (if applicable) within 10 days from the date of this ruling.

¹⁰ See PHC-3, November 20, 2001, RT at 67-69; PHC-4, February 27, 2003 RT at 186-187; 199-203, 215.

As discussed at the PHC, ORA laid out a work plan in early 2002 for verification efforts associated with post-1997 energy efficiency earnings claims, as follows:¹¹

- (1) Verification (paper review) of cost-effectiveness calculations for all Program Administrators' portfolios, including conformance with cost-effectiveness policy rules for Program Years 1999, 2000 and 2001.
- (2) Verification (paper review) of shareholder earnings claim calculations associated with Milestones for Program Years 1999, 2000 and 2001.
- (3) Verification of workpapers and other documentation provided by program administrators to assess the reasonableness of earnings amounts associated with each Milestone for each program administrator for Program Years 1999, 2000 and 2001.
- (4) Onsite visits for a sample of participants in PY2001 nonresidential programs in at least two of the four Program Administrators service territories.
- (5) Complete report on results of onsite visits for the SCE program for PY2000 and SoCal program for PY2001.
- (6) Verification of conformance with key policy rules, including cost-effectiveness, ESCO/EESP market share, after accounting for any ORA recommended adjustments to reports costs or benefits for each Program Year (1999, 2000 and 2001) for each Program Administrator.

At the PHC, I asked ORA to present a schedule for this work plan to address just the 2000 and 2001 AEAP post-1997 program earnings claims.¹² My

¹¹ See Judge Walwyn's ruling dated April 26, 2002 and Response of the ORA to ALJ Walwyn's Ruling regarding Additional Verification Work Plan For Post-1997 Energy Efficiency Program Years, dated April 3, 2002.

intent is to bifurcate the 2000/2001 AEAP claims from the 2002 AEAP (where no work on post-1997 earnings claims has been conducted to date), so that the 2000/2001 AEAP claims can be addressed as expeditiously as possible. ORA has not responded to this request, and should do so within 10 days from the date of this ruling.

As indicated in Attachment 1, I have tentatively scheduled evidentiary hearings for the 2000/2001 AEAP earnings claims related to post-1997 programs, should hearings be required, for the week of July 21, 2003. For the 2002 AEAP, I have scheduled the week of October 7, 2003. ORA's response to my request for a bifurcated work plan should accommodate these hearing dates.

5. 2003 AEAP

Utility applications for the 2003 AEAP are expected May 1, 2003. At the PHC, the utilities and interested parties recommended consolidating the 2003 AEAP into this proceeding. However, I believe that the Commission should wait until the 2003 AEAP applications are actually filed and the schedule for the pending applications in this consolidated proceeding has been finalized, before acting on that recommendation. Accordingly, the schedule set forth in Attachment 1 does not include the 2003 AEAP.

Nonetheless, there was some discussion about the scope of the 2003 AEAP at the PHC that warrants reiteration. In particular, the utilities and interested parties should expect that the Commission will consider the results of the 2002 LIEE load impact study in that proceeding, in order to update the performance

¹² RT at 219-220.

earnings basis of the existing LIEE incentive mechanism for prospective earnings.¹³

IT IS RULED that:

1. Within 10 days from the date of this ruling, the following information shall be filed and served:

- (a) The Office of Ratepayer Advocates (ORA) shall indicate the type of review of load impact and retention studies it plans to conduct in this proceeding, if none is indicated for a particular study in the utilities' March 17, 2003 filing.
- (b) For post-1997 earnings claims, ORA, the California Energy Commission, and The Utility Reform Network shall indicate, by milestone and program year claim, which milestone-related earnings claims for the 2000 and 2001 Annual Earnings Assessment Proceedings (AEAPs) have been reviewed in intervenor testimony or comments to date, which have not, and how the gaps in review are going to be filled by subsequent intervenor testimony.
- (c) ORA shall present a schedule for its work plan related to post-1997 earnings claims that bifurcates its review of the 2000 and 2001 AEAPs from the 2002 AEAP, so that the former can be addressed within the schedule set forth in Attachment 1.

2. Attachment 1 establishes the schedule for this consolidated AEAP. This schedule may be modified or augmented by subsequent rulings.

3. All filings or submittals required by today's ruling shall be filed at the Commission's Docket Office in the above-captioned proceedings and served electronically to all appearances and the state service list. Service by U.S. mail is optional, except that one hard copy shall be mailed to me at PO Box 210, Volcano,

¹³ RT at 193-194.

California 95689. In addition, if there is no electronic mail address available, the electronic mail is returned to the sender, or the recipient informs the sender of an inability to open the document, the sender shall immediately arrange for

alternate service (regular U.S. mail shall be the default, unless another means is mutually agreed upon). The current service list for this proceeding is available on the Commission's web page, www.cpuc.ca.gov.

Dated March 19, 2003, at San Francisco, California.

/s/ MEG GOTTSTEIN

Meg Gottstein
Administrative Law Judge

ATTACHMENT 1: CONSOLIDATED AEAP SCHEDULE ¹

<u>LOW-INCOME ENERGY EFFICIENCY (LIEE) CLAIMS</u>		<u>LOAD MANAGEMENT COST RECOVERY</u>
<u>2000 AEAP</u>		
PY99 LIEE First Claim		
PY98 LIEE Second Claim		
PY99 LIEE Collection		
<u>2001 AEAP</u>		<u>2002 AEAP</u>
PY00 LIEE First Claim		PY01 LIEE First Claim
PY99 LIEE Second Claim		PY01 Cost Recovery (SCE, SDG&E, PG&E)
ORA/Intervenor Additional Comments/Testimony:	March 28, 2003	March 28, 2003
Reply Comments/Testimony	April 4, 2003	April 11, 2003
ALJ Ruling Regarding Need For Hearings	April 15, 2003	April 15, 2003
Case Management Statmnt (if hearings necessary)	April 28, 2003	April 28, 2003
Hearings (if necessary)	May 5-9, 2003	May 5-9, 2003
ORA/Intervenor Comments/ Testimony		June 2, 2003
Utility Reply Comments/Testimony		June 16, 2003
ALJ Ruling Regarding Need For Hearings		June 20, 2003
Case Managemnt Statmnt (if hearings necessary)		July 3, 2003
Hearings (if necessary)		July 15-18, 2003

¹ Unless otherwise indicated, the earnings claims described above are for all four utilities.

ATTACHMENT 1: CONSOLIDATED AEAP SCHEDULE (CONTINUED) ¹

PRE-1998 ENERGY EFFICIENCY CLAIMS

POST-1997 ENERGY EFFICIENCY CLAIMS

2000 AEAP

Pre-98 EE in 1998 Second Claim
(PG&E, SCE, SoCal)

Pre-98 EE in 1999 First Claim
(PG&E, SoCal) and
PY95 EE Third Claim

2000 AEAP

PY99 EE Claim

2001 AEAP

PY00 EE Claim

2002 AEAP

PY01 EE Claim

2001 AEAP

Pre-98 EE in 1999 Second Claim
(PG&E, SoCal)

Pre-98 EE in 2000 First Claim
(PG&E), and
PY96 EE Third Claim

2002 AEAP

Pre-98 EE in 2000 Second Claim
(PG&E) and
PY97 DSM Third Claim

**Threshold Issue: To Reopen Shared-Savings
Incentive Mechanism Adopted in D.94-10-059:**

Supplemental Info
on Threshold Issue

March 17, 2003

Comments

March 24, 2003

(Schedule to be
developed)

(Schedule to be
developed)

Replies

April 1, 2003

Assessment of Earnings Claims:

(Schedule to be developed)

Evidentiary Hearings (tentative)

July 21-25, 2003

Evidentiary Hearings (tentative)

October 7-10, 2003

¹ Unless otherwise indicated, the earnings claims described above are for all four utilities.

(END OF ATTACHMENT 1)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judge's Ruling on all parties of record in this proceeding or their attorneys of record.

Dated March 19, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.